TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

No. 185.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY OF TEXAS, PLAINTIFF IN ERROR,

vs.

GLAY MAY

IN ERROR TO THE COUNTY COURT OF BELL COUNTY, STATE OF TEXAS.

FILED JANUARY 5, 1906.

(16,775.)

17607

(18,775.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 6, 1903.

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a Supreme Court of the United States.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
CLAY MAY, Defendant in Error.

Writ of Error.

The President of the United States to the honorable county court of Bell county, Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said county court of Bell county, Texas before you, being the highest court of law of the said State in which a decision could be had in the said suit between Clay May, plaintiff and defendant in error, and The Missouri, Kansas & Texas Railway Company of Texas, defendant and plaintiff in error, wherein was drawn in question the validity of a statute of the State of Texas on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of its validity, a manifest error has happened to the damage of said The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, shall be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you may have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

b Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 3rd day of December, 1902.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
E. D. WHITE,
Associate Justice.

c [Endorsed:] (4) (Orig.) Filed 11 day of Dec'r 1902 C. K. White county clerk. By W. J. Lee deputy.

1—185

1 *Caption.*

THE STATE OF TEXAS, }
County of Bell. }

At a regular term of the honorable county court of Bell county, Texas, which was begun and holden at the court house thereof, in the city of Belton, on the 6th, day of October, A. D. 1902, and which is still in session, with the Honorable G. M. Felts, county judge thereof, presiding, the following cause came on for trial, to-wit:

CLAY MAY
v.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY of Texas. } No. 2386.

Citation (Justice Court).

Citation.

The State of Texas to the sheriff or any constable of Bell county, said State, Greeting:

You are hereby commanded, that you summon the Missouri, Kansas & Texas R'y Co., of Texas, by citing it through its local agent, E. M. Dutton, at Holland Texas, to be and appear before me, a justice of the peace, in and for Bell county, at the next regular term of the justice's court, for precinct No. 3, of said county, to — begun and holden at my office, in Holland, on the 11th day of October, A. D. 1901 at ten o'clock a. m., to answer the complaint of Clay May, in a certain suit therein pending, in which Clay May, is plaintiff, against The Mississippi, Kansas & Texas R'y Co. of Texas, defendant, filed on the 16th day of September A. D., 1901, and numbered on docket No. 1276. The nature of plaintiff's demand being in substance an action for debt and damages due to plaintiff by the defendant for the sum of $25.00 as follows; plaintiff alleges that he is the owner of a certain tract of land in Bell county, Texas, near the town of Holland, which is contiguous to the right of way of defendant's railroad, and that defendant did on, to-wit, the 7th, or 8th, day of Sept. 1901, permit Johnson grass to go to seed upon its said right of way at a point where said land joins said right of way, to plaintiff's damage in the sum of $25.00.

Wherefore plaintiff prays judgment for his debt and dam-
2 age for the sum of $25.00, and cost of this suit.

Herein fail not, and have you then and there before said court this writ, with your return thereon, showing how you have executed the same.

Citation justice ct. concluded.

Given under my hand, this 16th, day of Sept. A. D. 1901.

J. L. WRIGHT,
J. P., Precinct No. 3, Bell Co., Texas.

Return.

Came to hand on the 26 day of Sept., A. D. 1901, and executed on the 26th, day of Sept., 1901, by delivering to E. M. Dutton, local agent at Holland, of the within named defendant, in person a true copy of this citation.

W. J. KENNEDY,
Constable, Prec't No. 3, Bell Co.

Defendant's Original Answer.

In Justice Court, Precinct No. 3, Bell County, Texas, October Term, 1901.

CLAY MAY
v.
M., K. & T. R'Y COMPANY OF TEXAS. } No. 1276.

Now comes defendant, by attorney, and excepting to plaintiff's pleadings, says the same are insufficient in law to constitute a cause of action herein against this defendant.

And for answer, if required to answer herein, defendant denies all and singular the allegations contained in plaintiff's pleadings and says the same are untrue and that defendant is not guilty of the wrongs, injuries, tresspasses and negligence whereof plaintiff hath herein complained against it.

And further answering herein defendant says that plaintiff has no right to recover from defendant herein, because, defendant says, that plaintiff permits and has permitted Johnson grass to go to seed upon land owned and upon land controlled by him and contiguous to the right of way of defendant.

GEO. W. TYLER,
JNO. D. ROBINSON,
Attorneys for Defendant.

Filed the 11th, day of October 1901.

J. L. WRIGHT,
J. P., Prec. No. 3, Bell Co.

Filed 12th, day of Dec. 1901.

C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

3 *Transcript from Justice Ct.*

Precinct No. 3, Bell County, Texas, J. L. Wright, J. P.

CLAY MAY, Plaintiff,
vs.
THE M., K. & T. R'Y CO. OF TEXAS, Defendant.

J. A. Jones, plaintiff's attorney.
—— ——, defendant's attorney.

Suit upon debt &c. for $25.00; of date —— — due —— —, interest at —. Filed — day of —— 189–. Citation issued the — day of —— 189–. Returnable to —— term, 189–, and placed in the hands of —— ——. Mailed to the sheriff of ——. Returned ——. Executed — day of —— 189–.

On the 11th, day of October 1901, this cause came on to be heard, defendant excepted to plaintiff's demand and the court overruled the exceptions. And both parties announced ready for trial. A jury having been waived the matters in controversy were submitted to the court. And the court after hearing the pleadings, the evidence and the law read, and argument of counsel, *the court* gave judgment for the plaintiff, Clay May, against the defendant, The Missouri, Kansas & Texas R'y Co. of Texas for the sum of $25.00 and all costs.

It is hereby ordered, adjudged and decreed by the court that the plaintiff, Clay May, do have and recover of the defendant the sum of $25.00 and all costs of this suit, and execution may issue.

J. L. WRIGHT,
J. P., Prec't No. 3, Bell County, Texas.

Justice's Cost.

Docketing	.10
Citation	.50
Swearing 1 witness	.10
Entering judgment	.50
Taking appeal bond	.50
Taxing cost &c	.10
Making transcript	1.50

Constable's Cost.

Serving citation	.70

THE STATE OF TEXAS, }
County of Bell. }

I, J. L. Wright, justice of the peace, do hereby certify that the above and foregoing is a true and correct transcript of the entries on my docket, on page 149, in cause of Clay May *vs.* The
4 M. K. & T. R'y Co. of Texas, and that the foregoing bill of costs is a true and correct statement of the costs incurred in said cause to this date.

Transcript from justice ct., concluded.

Witness my official signature, at Holland, this 26 day of Nov. 1901.

J. L. WRIGHT,
Justice of the Peace, Precinct No. 3, Bell County.

Filed 12 day of Dec'r A. D. 1901.

C. K. WHITE,
Clerk County Court, Bell Co., Texas.
By W. J. LEE, *Deputy.*

Appeal Bond.

In the Justice Court of Precinct No. 3.

Before me, J. L. Wright, Esq., a justice of the peace in and for the county of Bell, State of Texas,

CLAY MAY, Plaintiff,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS, Defendant. } No. 1276.

Whereas, Clay May, the plaintiff, recovered a judgment against The Missouri, Kansas & Texas Railway Company of Texas, the defendant in the above entitled and numbered cause, on the 11th, day of October A. D. 1901, before J. L. Wright, Esq., a justice of the peace in and for precinct No. 3, in the county of Bell, State of Texas, for the sum of ($25.00), twenty-five dollars, with interest thereon, from said date, at the rate of six per cent. per annum, besides cost of suit, from which judgment the said Missouri, Kansas & Texas Railway Company of Texas, has appealed to the county court of Bell county, State of Texas.

Now therefore, the said Missouri, Kansas & Texas Railway Company of Texas as principal, and —— —— as sureties acknowledge themselves bound to pay to the said Clay May the sum of ($200.00) two hundred dollars, conditioned that the said Missouri, Kansas & Texas Railway Company of Texas shall prosecute said appeal to effect, and shall pay off and satisfy the judgment which may be rendered against *against* the said Missouri, Kansas & Texas Railway Com-

pany of Texas on such appeal. Dated at Holland, this 11th, day of October A. D. 1901.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By GEO. W. TYLER, *Attorney.*
C. F. DENNY.
L. H. TYLER.

5 Filed and approved 11 day of October 1901.
J. L. WRIGHT,
J. P., Prec't 3, Bell Co., Texas.

Filed 12 day of Dec'r 1901.

C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

Statement of Plaintiff's Demands.

CLAY MAY *v.* THE MISSOURI, KANSAS & TEXAS Railway Company of Texas.	No. 2386. Suit Pending in County Court of Bell County, Texas, on Appeal from Justice's Court of Precinct 3, Bell County, Texas.

To the Hon. G. M. Felts, county judge:

Now comes the plaintiff, Clay May, with leave of the court, and makes his claim and demand herein against defendant a matter of record and, for cause of action against defendant, alleges,

I.

That plaintiff is and on all dates hereinafter mentioned, was the owner in fee simple of that certain tract of farm land, situated in Bell county, Texas, and being 122 acres of the W. R. Wills survey and bounded and described thus:

Beginning at a point N. 71 W. 187 vrs., from the original N. E. corner of said survey. Thence N. 71 W. 723 vrs., with the N. line of said survey to a corner of R. J. Goode's tract of which this is a part. Thence S. 19 W. 1015 vrs. to corner in south line of said Wills survey. Thence S. 71 E. 678 vrs., with south line of said survey to corner. Thence in a N. E. direction to the place of beginning.

II.

That said land of plaintiff is and was on the dates hereinafter mentioned contiguous to the right of way of The Missouri, Kansas & Texas Railway Company of Texas, defendant herein, for a distance of (600) six hundred feet and which right of way is and was on the

dates hereinafter mentioned owned and controlled by defendant and has been continuously so owned and controlled by defendant since the year 1891.

III.

That defendant, The Missouri, Kansas & Texas Railway Company of Texas is a private railway corporation, duly incorporated and organized under the laws of the State of Texas in the year 1891, since which date defendant has continuously owned, operated
6 maintained and controlled exclusively the said right of way and railway track thereon as a part of its railway system and of its railway line through Bell county and through the State of Texas.

IV.

That on the 7th, day of September 1901, defendant permitted a large amount of Johnson grass to mature and go to seed upon its right of way aforesaid and upon that particular portion of its said right of way to which plaintiff's land aforesaid is and was then and there contiguous.

V.

Statement of plaintiff's demands, concluded.

That plaintiff has not at any time permitted Johnson grass or Russian thistle to mature or to go to seed upon his land hereinbefore described, nor upon any other land of his contiguous to defendant's right of way, neither on said 7th, day of September 1901, nor at any other time prior to or since said last named date.

VI.

That by reason of the premises hereinbefore set forth and by virtue of the provisions of an act of the legislature of the State of Texas, entitled "An act to prohibit railroads and railway companies or corporations in this State from permitting Johnson grass or Russian thistle from going to seed upon their right of way, and fixing a penalty," approved April 18th, 1901, and which act went into effect on the 9th, day of July 1901, plaintiff sues herein and claims the right to recover of and from the defendant the sum of twenty five ($25.00) dollars, as provided in said statute, and for which amount and costs plaintiff asks judgment against defendant herein and as in duty bound he will ever pray &c.

J. A. JONES,
Attorney for Clay May, Plaintiff.

Filed Oct. 16th, 1902.

C. K. WHITE, *Co. Clerk,*
By W. J. LEE, *Dep.*

Defendant's 1st Amended Original Answer.

CLAY MAY
vs.
THE MISSOURI, KANSAS & TEXAS Railway Company of Texas.

No. 2386. Suit Pending in the County Court of Bell County, Texas.

7 Now comes, the defendant, The Missouri, Kansas & Texas Railway Company of Texas, by attorney, and with leave of the court, files this its first amended original answer in lieu of its original answer filed in this cause on the 11th, day of October 1901, in the court below, and defendant, by way of special exception, says:

That the plaintiff herein sues defendant for the penalty of $25.00 denounced and prescribed by an act of the legislature of the State of Texas, approved April 18th, 1901, and which is as follows:

JOHNSON GRASS.

H. B. No. 470.

CHAPTER CXVII.

An act to prohibit railroad and railway companies or corporations in this State from permitting Johnson grass or Russian thistles from going to seed upon their right of way, and fixing a penalty.

SECTION 1. *Be it enacted by the legislature of the State of Texas:* It shall hereafter be unlawful for any railroad or railway company or corporation doing business in this State to permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way, owned, leased or controlled by such railroad or railway company or corporation in this State.

Defendant's 1st amended original answer, continued.

SEC. 2. If it shall appear upon the suit of any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company, or corporation, that said railroad or railway company, or corporation has permitted any Johnson grass or Russian thistle to mature or to go to seed upon their right of way such person so suing shall recover from such railroad or railway company, or corporation, the sum of twenty five dollars, and any such additional sum as he may have been damaged by reason of such railroad or railway company or corporation permitting Johnson grass or Russian thistle to mature or go to seed upon their right of way. Provided, any owner of land, or any person controlling land contiguous to the right of way of any such railroad or railway company who permits any Johnson grass or Russian

thistle to mature, or go to seed upon said land, shall have no right to recover from such railroad or railway company as provided for in this act.

(NOTE.—The enrolled bill shows that the foregoing act
8 passed the house of representatives, no vote given; and passed the senate by vote, yeas 18, nays 7.)

Approved April 18th, 1901.
Takes effect 90 days after adjournment.

And which act was, if otherwise valid, in full force and effect on the date of the acts, doings and defaults of defendant complained of by plaintiff and on the date of filing of this suit and at this time; that no other law or statute of said State of Texas prescribes such penalty or authorizes the bringing or maintaining of this suit; that said act of April 18th, 1901, hereinbefore set out in full and under which this action is brought and is now sought to be maintained, in so far as it purports to authorize the bringing and maintainance of this action by plaintiff against defendant and the recovery by plaintiff from defendant herein of a penalty for the acts, defaults, matters and things complained of herein, is in violation of and repugnant to that portion of the first section of the fourteenth amendment to the Constitution of the United States, providing that,

Defendant's 1st amended original answer, continued.

"No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And defendant says that said act of the legislature of the State of Texas, approved April 18th, 1901, violates the foregoing provision of the Constitution in the following particulars, to-wit:

1st. It seeks to make it unlawful for any railroad or railway company or corporation doing business in this State to permit any Johnson grass or Russian thistle to mature or to go to seed upon any right of way owned, leased or controlled by such railroad or railway company or corporation in this State, but does not make it unlawful for other citizens of the State or of the United States owning, leasing or controlling any right of way or other lands or realty in this State to permit Johnson grass or Russian thistle to mature or go to seed on their said premises.

9 2nd. It seeks to authorize "any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company or corporation" which "has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way" to sue and "recover from such railroad or railway company or corporation the sum of twenty-five dollars and any such additional sum as he may have been damaged" thereby, but does

not authorize such "railroad or railway company or corporation" to sue or recover from other citizens any penalty or other sum of money for "permitting Johnson grass or Russian thistle to mature or go to seed upon" the premises of such other citizen contiguous to the right of way of such railroad or railway company or corporation.

Defendant's 1st amended original answer, continued.

3rd. While the railway company is subject to suit, penalty and damage for permitting Johnson grass or Russian thistle to mature or go to seed upon its right of way, no other citizen or class of citizens are subject to like punishment for permitting Johnson grass or Russian thistle to mature or go to seed upon their premises contiguous to the right of way, but other citizens are merely deprived of their right to recover from the railway company the penalty and damages otherwise given them under the statute.

4th. Said act abridges the privilege of this defendant and of all other railway companies to plant, cultivate, mature or permit to mature or go to seed upon any right of way owned, leased or controlled by them in this State, *and* any and all crops of grasses and other products of the soil, which privilege all other citizens and classes of citizens may enjoy and exercise with perfect immunity under the provision of said act.

5th. By denouncing as unlawful and by authorizing the recovery of penalties and damages from railway companies for the acts mentioned in said statute and leaving all other citizens free to permit Johnson grass or Russian thistle to mature or go to seed upon their lands, said statute makes an unreasonable, unjust and arbitrary distinction against railway companies, including this defendant and in favor of other citizens, abridges the privileges and immunities of *of* railway companies, including this defendant, deprives them and this defendant of their property without due process of law, and denies to them and this defendant the equal protection of the laws.

Wherefore defendant prays the judgment of the court that said statute be declared unconstitutional and void, that plaintiff's suit be dismissed and that defendant go hence without day and recover of plaintiff its costs in this behalf expended &c.

T. S. MILLER &
GEO. W. TYLER,
Attorneys for Defendant.

Defendant's 1st amended original answer, continued.

And for answer on the merits, if required to answer herein, defendant admits all the facts alleged by plaintiff and that the facts are well pleaded but says that plaintiff ought not to have and maintain his cause of action against defendant, for this: that plaintiff herein sues defendant for the penalty of twenty-five dollars denounced and prescribed by an act of the legislature of the State of Texas, approved April 18th, 1901, and which is as follows, to wit:

JOHNSON GRASS.

H. B. No. 470.

CHAPTER CXVII.

An act to prohibit railroad and railway companies or corporations in this State from permitting Johnson grass or Russian thistles from going to seed upon their right of way, and fixing a penalty.

SECTION 1. *Be it enacted by the legislature of the State of Texas* · It shall hereafter be unlawful for any railroad or railway company or corporation doing business in this State to permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way, owned, leased or controlled by such railroad or railway company or corporation in this State.

SEC. 2. If it shall appear upon the suit of any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company, or corporation, that said railroad or railway company or corporation has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way such person so suing shall recover from such railroad or railway company or corporation, the sum of twenty-five dollars, and any such additional sum as he may have been damaged by reason of
11 such railroad or railway company or corporation permitting Johnson — or Russian thistle to mature or go to seed upon their right of way. *Provided*, any owner of land, or any person controlling land contiguous to the right of way of any such railroad or railway company, who permits any Johnson grass or Russian thistle to mature, or go to seed upon said land, shall have no right to recover from such railroad or railway company as provided for in this act.

(NOTE.—The enrolled bill shows that the foregoing act passed the house of representatives, no vote given ; and passed the senate by vote, yeas 18, nays, 7.)

Approved April 18th, 1901.
Takes effect 90 days after adjournment.

Defendant's 1st amended original answer, continued.

And which act was, if otherwise valid, in full force and effect on the date of the acts, doings and defaults of defendant, complained of by plaintiff herein, and on the date of the finding of this suit and at this time; that no other law or statute of said State of Texas prescribed such penalty or authorizes the bringing or maintaining of this suit; that said act of April 18th, 1901, hereinbefore set out in full and under which this action is brought and is sought to be maintained in so far as it purports to

authorize the bringing and maintenance of this action by plaintiff against defendant and the recovery by plaintiff from defendant herein of a penalty for the acts, defaults, matters and things complained of herein, is in violation of and repugnant to that portion of the 1st section of the 14th amendment to the Constitution of the United States providing that,

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws:"

And defendant says that said act of the legislature of the State of Texas, approved April 18th, 1901, violates the foregoing provisions of the Constitution in the following particulars, to wit:

1st. It seeks to make it unlawful for any railroad or railway company or corporation doing business in this State to permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way, owned, leased or controlled by such railroad or railway company or corporation in this State, but does not make it unlawful for other citizens of the State or of the United States owning, leasing or controlling any right of way or other lands or realty in this State to permit Johnson grass or Russian thistle to mature or go to seed on their said premises.

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Defendant's 1st amended original answer, continued.

2nd. It seeks to authorize any person owning, leasin- or controlling land contiguous to the right of way of any such railroad or railway company or corporation which has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way to sue and "recover from such railroad or railway company or corporation the sum of twenty five dollars, and any such additional sum as he may have been damaged" thereby, but does not authorize such railroad or railway company or corporation to sue or recover from other citizens any penalty or other sum of money for "permitting Johnson grass or Russian thistle to mature or go to seed upon" the premises of such other citizen contiguous to the right of way of such railroad or railway company or corporation.

3rd. While the railway company is subject to suit, penalty and damages for permitting Johnson grass or Russian thistle to mature or go to seed upon its right of way no other citizen or class of citizens are subject to like punishment for permitting Johnson grass or Russian thistle to mature or go to seed upon their premises contiguous to the right of way, but other citizens are merely deprived of their right to recover from the railway company the penalty and damages otherwise given them under this statute.

4th. Said act abridges the privilege of this defendant and of all other railway companies to plant, cultivate, mature or permit to mature or go to seed upon any right of way owned, leased or controlled by them in this State, any and all crops of grasses and other products of the soil, which privilege all other citizens and classes of

citizens may enjoy and exercise with perfect immunity under the provisions of said act.

13 *5th.* By denouncing as unlawful and by authorizing the recovery of penalties and damages from railway companies for the acts mentioned in said statute and leaving all other citizens free to permit Johnson grass or Russian thistle to mature or go to seed upon their lands said statute makes an unreasonable, unjust and arbitrary distinction against railway companies, including this defendant, and in favor of other citizens, abridges the privileges and immunities of railway companies, including this defendant, deprives them and this defendant of their property without due process of law and denies to them and this defendant the equal protection of the laws.

Defendant's 1st amended original answer concluded.

Wherefore defendant prays that plaintiff take nothing by his suit and that defendant go hence without day and recover of plaintiff its costs in this behalf expended, and as in duty bound will ever pray, &c.

T. S. MILLER &
GEO. W. TYLER,
Attorneys for Defendant.

Filed Oct. 16th, 1902.
C. K. WHITE, *Co. Clerk,*
By W. J. LEE, *Deputy.*

Decree of the Court.

Decree.

CLAY MAY
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY of Texas. } No. 2386.

This cause coming on to be heard on this 16th day of October, 1902, came the plaintiff, Clay May, in person and by his attorney of record, and also came the defendant, The Missouri, Kansas & Texas Railway Company of Texas, by its attorney of record, and said parties having reduced to writing their pleadings in this cause, announced themselves ready for trial both on the law and the facts, and the parties having waived a jury and submitted the matters of fact as well as of law to the court, without the intervention of a jury, and defendant, The Missouri, Kansas & Texas Railway Company of Texas, having specially excepted to the plaintiff's demand and cause of action on the ground that the statute (act of April 18th, 1901) under which plaintiff claims, is in violation of the fourteenth amendment of the Constitution of the United States, and the

14 court having heard the said exception of defendant and the argument of counsel thereon, the same is here now over-

ruled in all things, to which ruling of the court defendant, by attorney, in open court excepts.

And plaintiff having read and presented his pleadings and the defendant, by its attorney, having in open court admitted that all the facts alleged therein by plaintiff are true, that said facts are well pleaded and would constitute a good cause of action, but that plaintiff is not entitled to recover herein because the statute of Texas, under which plaintiff sues, is in violation of the fourteenth amendment to the Constitution of the United States as set out more fully in defendant's written pleadings, and the court having heard the said pleadings of the parties, the admissions of fact by defendant and the argument of counsel on both sides, is of the opinion that the law and the facts are with the plaintiff and that he is entitled to recover of defendant the $25.00 sued for.

Decree of the court concluded.

It is therefore ordered, adjudged and decreed by the court that plaintiff, Clay May, do have and recover of and from the defendant Th- Missouri, Kansas & Texas Railway Company of Texas, the sum of twenty five dollars, to bear six per cent. interest per annum from this date, together with all costs of this court and of the justice court from which this cause was appealed and for all of which let execution issue.

Motion for New Trial.

CLAY MAY *vs.* THE MISSOURI, KANSAS & Texas Railway Company of Texas.	No. 2386. Suit Tried in County Court of Bell County, Texas, October 16th, 1902.

Now comes The Missouri, Kansas & Texas Railway Company of Texas, defendant herein, by attorney, and moves the court to set aside the judgment rendered in this cause and grant a new trial therein upon the following grounds, to-wit:

The court erred in overruling the special exception of defendant to the pleadings of plaintiff and in rendering judgment for plaintiff on the merits in this:—

The act of the legislature of the State of Texas, approved April 18th, 1901, and on which plaintiff's suit is based, is in viola-
15 tion of the fourteenth amendment to the Constitution of the United States and void.

T. S. MILLER &
GEO. W. TYLER,
Attorneys for Defendant.

Filed Oct. 16th, 1902.

C. K. WHITE,
Clerk County Court, Bell County, Texas,
By W. J. LEE, *Deputy.*

Order Overruling the Motion for New Trial.

Order overruling motion.

CLAY MAY
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY of Texas. } No. 2386.

On this the 17th, day of October, 1902, in term time, came on to be heard the motion of The Missouri, Kansas & Texas Railway Company of Texas, defendant herein, for a new trial in this cause, and the same being understood and fully considered by the court, is in all things overruled and denied, to which ruling of the court, defendant then and there in open court excepted.

Bill of Exception.

CLAY MAY
v.
THE MISSOURI, KANSAS & TEXAS Railway Company of Texas. } No. 2386. Suit Tried in County Court of Bell County, Texas, October 16th, 1902.

Be it remembered that on the trial of the above numbered and entitled cause the following proceedings were had:

Defendant having filed a special exception to plaintiff's pleadings and cause of action herein on the ground that the act of the legislature of the State of Texas, approved April 18th, 1901, under which plaintiff brought and maintains this suit is in violation of the fourteenth amendment to the Constitution of the United States and therefore void, and which special exception being submitted to the court was in all things overruled and defendant then and there in open court excepted to said ruling of the court.

And plaintiff thereupon submitted his pleadings to the court upon the merits of this cause, and defendant then and there admitted that the facts pleaded by plaintiff are true and that the said facts are well pleaded, further pleaded specially that the said act
16 of the legislature of the State of Texas, approved April 18th, 1901, is in violation of the fourteenth amendment of the Constitution of the United States and void, whereupon the court rendered judgment in favor of plaintiff and against defendant for the sum of twenty-five ($25.00) dollars and all costs of suit, to which ruling and judgment of the court defendant, by counsel, then and there, in open court, excepted.

Bill of exception, concluded.

And defendant here now tenders the foregoing bills of exception to each and all of said rulings, actions and proceedings of the court and prays that the same be certified, filed and made a part of the

record of this cause, which is accordingly done in term time on this 16th day of October 1902.

G. M. FELTS,
County Judge, Bell County, Texas.

Filed Oct. 16th, 1902.

C. K. WHITE, *Co. Clerk,*
By W. J. LEE, *Deputy.*

Bill of Exception on Motion for New Trial.

CLAY MAY
v.
THE MISSOURI, KANSAS & TEXAS Railway Company of Texas.

No. 2386. Cause Tried in County Court of Bell County, Texas, October Term, 1902.

Be it remembered that on the motion of defendant, The Missouri, Kansas & Texas Railway Company of Texas, for a new trial of this cause, the following proceedings were had to wit:—

Defendant moved the court to set aside the judgment rendered in this cause on the ground that the act of the legislature of the State of Texas, approved April 18th, 1901, is in violation of the fourteenth amendment to the Constitution of the United States, which motion of defendant was on the 17th day of October 1902, overruled and denied by the court, to which ruling of the court, defendant, then and there excepted in open court, and here now tenders its bill of exception and prays that the same be certified, filed and made a part of the record in this cause which is accordingly done in term
17 time, on the seventeenth (17th,) day of October 1902.

G. M. FELTS,
County Judge, Bell County, Texas.

Filed October 17th, 1902.

C. K. WHITE,
Clerk County Court, Bell County, Texas.
By W. J. LEE, *Deputy.*

18

Bill of Costs.

CLAY MAY, Plaintiff,
vs.
M., K. AND T. R'Y CO. OF TEXAS, Defendant. } No. 2386.

M-. Geo. W. Tyler to Officers of Court, Dr.

To costs accrued in above entitled cause to adjournment of October term, 1902.

Date. Month.	Day.	Year.	Clerk's fees.	Fee.	Amount of fees.
			To filing and docketing cause &c		25
			" " papers		40
			" recording decree		85
			" filing and docketing motion new trial		15
			" entering order overruling same		25
			" taxing cost		25
			" transcript to supreme court		10 00
					$12 15
			1 subpœna & 2 add. names		45
					$12 60
			County judge		3 00
			Sheriff.		
			Summoning witness & mileage		4 00
			Miscellaneous Costs.		
			Justice court precinct No. 3		4 00
			Miscellaneous costs		
			Clerk's costs		
			Sheriff's fees		
			Recapitulation		
			Total		$23 60

[Endorsed:] File No. 2386 In county court, Bell county. Bill of costs. Oct. term, 1902 Clay May *vs.* M. K. & T. R'y Co. of Texas. Issued Oct. 28, 1902 C. K. White clerk county court Bell county. By W. J. Lee deputy.

THE STATE OF TEXAS, }
County of Bell. }

In County Court, Bell County.

I, C. K. White, clerk of the county court in and for said county and State, hereby certify the within to be a correct account of the costs in above entitled and numbered suit up to this date.

Given under my hand and official seal, the 28th day of October A. D. 1902.

[Seal County Court of Bell County, Texas.]

C. K. WHITE,
Clerk County Court Bell County,
By W. J. LEE,
Deputy Clerk.

19 THE STATE OF TEXAS, }
County of Bell. }

I, C. K. White, clerk of the county court of Bell county, Texas, do hereby certify that the foregoing and attached 18 pages contain a full, true and correct transcript and copy of all the proceedings of the honorable county court of Bell county State of Texas, in the cause, No. 2386, entitled Clay May *v.* The Missouri, Kansas & Texas Railway Company of Texas, as the same appear entered and recorded in the minutes of said court, and of all original documents, papers and memoranda of every kind now on file in said court in the said cause or appertaining thereto.

Given under my hand and the seal of said court, at Belton, this 28th, day of October 1902.

[Seal County Court of Bell County, Texas.]

C. K. WHITE,
Clerk County Court, Bell County, Texas.

20 THE STATE OF TEXAS, }
County of Bell. }

I, G. M. Felts, county judge of Bell county, State of Texas, the presiding judge of the county court of said county, do hereby certify that C. K. White, whose genuine signature is signed to the foregoing attestation is and was at the time of signing the same the duly and legally elected, qualified and acting clerk of the county court of Bell county, State of Texas, and as such is and was the proper person to make said attestation and that said attestation is in due form.

Given under my hand and the seal of said court, at Belton, this 28th, day of October 1902.

[Seal County Court of Bell County, Texas.]

G. M. FELTS,
County Judge of Bell County, Texas.

21 THE STATE OF TEXAS, }
County of Bell. }

I, C. K. White, clerk of the county court, of Bell county, State of Texas, do hereby certify that the Honorable G. M. Felts, whose

genuine signature is signed to the foregoing certificate, is and was at the time of signing the same the duly and legally elected, qualified and acting county judge of Bell county, State of Texas, and as such is and was the proper person to make said certificate and that said certificate is in due form.

Given under my hand and the seal of said court, at Belton, this 28th, day of October 1902.

[Seal County Court of Bell County, Texas.]

C. K. WHITE,
Clerk County Court, Bell County, Texas.

22 *Petition for Writ of Error.*

In the County Court of Bell County, Texas.

CLAY MAY
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

To the honorable the Chief Justice and associate justices of the supreme Court of the United States:

Now comes The Missouri, Kansas & Texas Railway Company of Texas a corporation duly organized and incorporated under and by virtue of the laws of the State of Texas, and defendant in the above entitled cause, by James Hagerman, T. S Miller and Geo. W. Tyler, its attorneys, and complains that in the record and proceedings, and also in the rendition of the judgment entered on the 16th, day of October, 1902, by the county court of Bell county, State of Texas, in said suit, a manifest error has been committed against said The Missouri, Kansas & Texas Railway Company of Texas in overruling and denying the pleas of the defendant to the effect that the act of the legislature of the State of Texas, approved April 18, 1901, known as the Johnson grass act, and under the provisions of which plaintiff brought and maintained an action against said defendant is repugnant to and in violation of the fourteenth amendment of the Constitution of the United States, and in rendering judgment in favor of the said Clay May against the said Missouri, Kansas & Texas Railway Company of Texas, as will appear from the transcript of the proceedings in said cause and the assignment of errors filed herewith; and the said defendant, The Missouri, Kansas & Texas Railway Company of Texas, asks for an order allowing said defendant to prosecute a writ of error to the said county court of Bell county, Texas, under and according to the laws of the United States in that behalf made and provided, and that the supersedeas bond herewith presented be approved, and that all further proceedings in said county court of Bell county be stayed until the determination of said writ of error by the Supreme Court of the United States. And your petitioner further shows that under sections 1, 2, 3. 6, 7, 8, 15,

and 16 of the constitution of Texas, and articles 940, 941 and 996 of the Revised Statutes of Texas, the county court of Bell county, Texas, is the highest court of the State af Texas in which a decision can be had in said case. (Hall *vs.* McGill, 28 S. W. Rep. 828; G. C. & S. F. R'y Co. *vs.* Hefley, 158 U. S. 98.)

Petition for writ of error concluded. 23

And your petitioner will -ver pray.

A. B. BROWNE,
ALEX. BRITTON,
JAMES HAGERMAN,
Attorneys for the Missouri, Kansas & Texas Railway Company of Texas.

Filed 11th day of Dec'r, 1902.
C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

In the County Court of Bell County, Texas.

CLAY MAY
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Assignments of Error.

Comes now The Missouri, Kansas & Texas Railway Company of Texas, defendant and plaintiff in error, and files the following assignments of error on which it will rely in the prosecution of its writ of error in the above entitled cause.

I.

The county court of Bell county, Texas, erred in not holding and adjudging the act of the legislature of the State of Texas, entitled "An act to prohibit railroad and railway companies or corporations in this State from permitting Johnson grass or Russian thistle from going to seed on their right of way, and fixing a penalty," approved April 18th, 1901, void and unconstitutional, as repugnant and in violation of the fourteenth amendment to the Constitution of the United States, and in not dismissing plaintiff's action as prayed in defendant's original answer, and in rendering judgment for the plaintiff; because,

1. Said act seeks to make it unlawful for a railroad or railway company doing business in the State of Texas to permit Johnson grass or Russian thistle to mature or go to seed upon any right owned, leased or controlled by such railroad or railway company or corporation in said State; but does not make it unlawful for any other citizen of said State or of the United States 24

owning, leasing or controlling any right of way or other lands or railroad in said State to permit Johnson grass or Russian thistle to matur- or go to seed on their said premises.

2. Said act seeks to authorize any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company or corporation which has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way to sue and recover from such railroad or railway company or corporation the sum of twenty five dollars ($25.00), and any such additional sum as he may have been damaged thereby, but does not authorize such railroad or railway company or corporation to sue or recover from other citizens or from any railroad company any penalty or other sum of money for permitting Johnson grass or Russian thistle to mature or go to seed upon the premises of such other citizen or railroad company contiguous to its right of way.

Assignment of errors continued.

3. While the railway company is subject to suit, penalty and damages under said act for permitting Johnson grass or Russian thistle to mature or go to seed upon its right of way, no other citizen or class of citizens are subject to a like punishment or damages for permitting Johnson grass or Russian thistle to mature or go to seed upon their premises.

4. Said act authorizes a recovery of the penalty therein prescribed by the persons designated although such persons, and no other persons, in fact, suffer or sustain any damages whatever by reason of the things prohibited.

5. Said act abridges the privilege of this defendant and of all other railway companies to plant, cultivate or mature, or to permit to grow and mature or to go to seed upon any right of way owned, leased, or controlled by them in said State any and all crops, grasses and other products of the soil, which privilege all other citizens and classes of citizens enjoy and may enjoy and exercise with perfect immunity under the provisions of said act and the general laws of the State of Texas.

6. Said act denounces as unlawful and authorizes the recovery of penalties and damages from railroad companies for the acts mentioned in said statutes and leaves all other citizens free to permit or suffer the things prohibited by said act, and thereby makes an unreasonable, unjust, arbitrary and unlawful distinction in classification against railroad and railway companies, including this defendant, and in favor of the other citizens and abridges the privileges and immunities of railway companies, including this defendant and deprives them and this defendant of their property without due process of law, and denies to them and this defendant, the equal protection of the laws.

II.

The county court of Bell county erred in not sustaining the special exception of the Missouri, Kansas & Texas Railway Company of

Assignments of errors, concluded.

Texas to plaintiff's demand and cause of action on the ground that said act of the legislature of the State of Texas of April 18, 1901 was in violation of and repugnant to the fourteenth amendment to the Constitution of the United States.

III.

The county court of Bell county erred in holding and deciding that said act of the legislature of Texas was constitutional and not repugnant to the fourteenth amendment to the Constitution of the United States, and that upon the pleadings the plaintiff was entitled to recover of and from the defendant the sum of twenty five dollars ($25.00) penalty, with interest, as provided in said act.

IV.

The trial court erred in not rendering judgment for the Missouri, Kansas & Texas Railway Company of Texas, defendant and plaintiff in error.

Wherefore the said defendant and plaintiff in error prays that the judgment of said county court of Bell county, Texas, be reversed with directions to enter judgment for the plaintiff in error.

GEORGE W. TYLER,
T. S. MILLER,
JAMES HAGERMAN,
Attorneys for Defendant and Plaintiff in Error.

Filed 11 day of Dec. 1902.
C. K. WHITE,
County Clerk.

26 Supreme Court of the United States.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS, Plaintiff in Error,
vs.
CLAY MAY, Defendant in Error.

Supersedeas Bond.

Know all men by these presents, that we, The Missouri, Kansas & Texas Railway Company of Texas, as principal, and L. C. Nelson, of St. Louis Missouri, as surety, are held and firmly bound unto Clay May in the penal sum of five hundred dollars, ($500.00) to be paid to the said Clay May, his executors or administrators, to which payment well and truly to be made we hereby bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents, upon the following conditions, to-wit:

Whereas, the above named, The Missouri, Kansas & Texas Railway Company of Texas, has sued out a writ of error in the above entitled cause, in the Supreme Court of the United States, to reverse the judgment rendered against it in the said cause by the county court of Bell county, Texas.

Now therefore, the condition of this obligation is such that if the said The Missouri, Kansas & Texas Railway Company of Texas shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void, otherwise to be and remain in full force and effect.

Sealed with our seals and dated this 19th day of November 1902.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.
[L. S.] By JAMES HAGERMAN,
Its General Solicitor.
L. C. NELSON. [SEAL.]

Attest: R. W. WAGNER,
Assistant Secretary.

Approved:
E. D. WHITE,
Associate Justice.

27 STATE OF MISSOURI, } ss:
City of St. Louis, }

L. C. Nelson, being duly sworn, upon his oath, states that he is the owner of the value of many times the sum of the above and foregoing bond over and above all incumbrances and exemptions.

Supersedeas bond, concluded.

L. C. NELSON.

Subscribed and sworn to before me, this 19th, day of November 1902.

My commission as notary public will expire on the 17th, day of March, 1905.

[L. S.] J. M. NELSON, JR.,
Notary Public.

Filed 11th, day of December 1902.

C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

Supreme Court of the United States.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
CLAY MAY, Defendant in Error.

Writ of Error.

The President of the United States to the honorable county court of Bell county, Texas, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of the plea which is in the said county court of Bell county, Texas, before you, being the highest court of law of the said State in which a decision could be had in the said suit between Clay May, plaintiff and defendant in error, and The Missouri Kansas & Texas Railway Company of Texas, defendant and plaintiff in error, wherein was drawn in question the validity of a statute of the State of Texas on the ground of it being repugnant to the Constitution and laws of the United States, and the decision was in favor of its validity, a manifest error has happened to the damage of said The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, as by its complaint appears.

28 We being willing that error, if any hath been, shall be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you may have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held; that the record and proceeding aforesaid being inspected the said Supreme Court may cause further to be dome therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Writ of error concluded.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 3rd day of December 1902.

JAMES H. McKENNEY,
[L. S.] *Clerk of the Supreme Court of the United States.*

Allowed by,
E. D. WHITE, *Associate Justice.*

Filed 11th day of December 1902.
C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

Supreme Court of the United States.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS, Plaintiff in Error,
vs.
CLAY MAY, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Clay May, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, within thirty (30) days from date hereof, pursuant to a writ of error filed in the office of the clerk of the county court of Bell county, Texas, in a cause wherein The Missouri, Kansas & Texas Railway Compaay of Texas is defendant and you are plain-
29 tiff, to show cause, if any there be, why the judgment in said writ of error complained of should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness, the Honorable Edward D. White, justice of the Supreme Court of the United States, this 3rd day of Dec., 1902.

E. D. WHITE,
Associate Justice.

Service of the within citation and receipt of a copy thereof admitted this 11th day of December, 1902.

J. A. JONES,
Solicitor for Clay May, Defendant in Error and Plaintiff in Lower Court.

Filed 11th day of Dec'r 1902.
C. K. WHITE,
County Clerk,
By W. J. LEE, *Deputy.*

30 STATE OF TEXAS, }
County of Bell. }

I, C. K. White, clerk of the county court of Bell county, Texas, do hereby certify that the foregoing and attached 29 pages contain a full, true and correct transcript and copy of all the proceedings of the honorable county court of Bell county, State of Texas, in the cause No. 2386, entitled Clay May *vs.* The Missouri, Kansas & Texas Railway Company of Texas, as the same appears entered and recorded in the minutes of said court and of all original documents,

papers and memoranda of every kind now on file in said cause or appertaining thereto, and also of the petition for writ of error, assignment of error, supersedeas bond, writ of error and citation in error with acknowledgement of copy thereof by defendant in error, and I further certify that a true and correct copy of said writ of error was filed in this court on the 11th, day of December 1902 for the use of defendant in error and that this transcript is annexed to the original writ of error and is here now returned therewith into the Supreme Court of the United States.

Given under my hand and the seal of said court, at Belton this 16th, day of December 1902.

[Seal County Court of Bell County, Texas.]

C. K. WHITE,
Clerk County Court, Bell County, Texas.

31 STATE OF TEXAS, }
County of Bell. }

I, G. M. Felts, county judge of Bell county, State of Texas, the presiding judge of the county court of said county, do hereby certify that C. K. White, whose genuine signature is signed to the foregoing attestation is and was at the time of signing the same the duly and legally elected, qualified and acting clerk of the county court of Bell county, State of Texas, and as such is and was the proper person to make said attestation and that said attestation is in due form.

Given under my hand and the seal of said court, at Belton, this 16th, day of December 1902.

[Seal County Court of Bell County, Texas.]

G. M. FELTS,
County Judge of Bell County, Tx.

32 STATE OF TEXAS, }
County of Bell. }

I, C. K. White, clerk of the county court, of Bell county, State of Texas, do hereby certify that the Honorable G. M. Felts, whose genuine signature is signed to the foregoing certificate, is and was at the time of signing the same the duly and legally elected, qualified and acting county judge of Bell county, State of Texas, and as such is and was the proper person to make said certificate and that said certificate is in due form.

Given under my hand and seal of said court, at Belton, this 16th, day of Dec'r, 1902.

[Seal County Court of Bell County, Texas.]

C. K. WHITE,
Clerk County Court, Bell County, Texas.

[Endorsed:] No. —. — assignment. The Missouri, Kansas and Texas R'y Co. of Texas appellant, *vs.* Clay May appellee. From Bell county, State of Texas. Applied for by Geo. W. Tyler attorney, for appellant on the 17 day of Oct. A. D. 1902. Delivered to Geo. W. Tyler on the 16 day of Dec'r A. D. 1902. C. K. White clerk county court Bell county.

Endorsed on cover: File No. 18,775. Texas county court of Bell county. Term No. 185. The Missouri, Kansas and Texas Railway Company of Texas, plaintiff in error, *vs.* Clay May. Filed January 5″, 1903.